

GAO

Report to the Chairman and Ranking
Minority Member, Subcommittee on
Environmental Protection, Committee on
Environment and Public Works, U.S.
Senate

March 1987

ENDANGERED SPECIES:

Limited Effect of Consultation Requirements on Western Water Projects



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538377



United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-226076

March 26, 1987
The Honorable George Mitchell, Chairman
The Honorable John Chafee, Ranking
Minority Member
Subcommittee on Environmental Protection
Committee on Environment and Public Works
United States Senate

This report is in response to your request that we examine the effect of the Endangered Species Act on the exercise of water rights in western states. It specifically addresses your questions concerning the act's section aimed at protecting threatened or endangered species by requiring federal agencies to consult with the Department of the Interior before taking or authorizing development actions.

The report presents the results of a project by project analysis of the consultation process' impact on western water projects measured in terms of project delays, -- modifications and cost increases. It also describes the results of our review of western state water laws and their compatibility with the Endangered Species Act's goals. Finally, the report discusses the opinions of agency officials about increased use of informal consultations to accomplish the act's purposes. As arranged with your offices, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to the Department of the Interior, as well as the several agencies that consulted with them during the period of our review. Copies will be made available to others on request.

This review was performed under the direction of Michael Gryszkowiec, Associate Director. Major contributors are listed in appendix IV.

J. Dexter Peach
Assistant Comptroller General

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Executive Summary

Purpose

In areas of the West where water is scarce, federal efforts to provide enough water to ensure the survival of endangered fish, animal, and plant species have generated considerable controversy. Other competitors for the available water have claimed that reserving water for these species has hampered their ability to develop water resources for irrigation, municipal water supply, industrial development, or related purposes. In particular, water developers have objected to the Endangered Species Act's provision that requires the federal agency approving or financing their project to consult with the Interior Department to help ensure that their actions will not jeopardize endangered species.

Against a backdrop of this controversy, the Chairman and Ranking Minority Member, Subcommittee on Environmental Protection, Senate Committee on Environment and Public Works, asked GAO, among other questions, to assess, on a project-by-project basis, the actual effect of the act's consultation requirements on western water development. _

Background

The Endangered Species Act of 1973 was passed by the Congress because many species had become extinct or were threatened with extinction as a result of economic growth and development. The act provided for identifying endangered and threatened species and set out various requirements that would reduce their chances of extinction. Federal agencies are required to consult with Interior's Fish and Wildlife Service so that actions the agencies authorize, fund, or carry out are not likely to jeopardize the continued existence of nonmarine species.

Consultations can include simple requests for descriptions of the endangered or threatened species in a certain area, or can be as detailed as a biological investigation of a proposed project's effect on an endangered species known to be present in an area. The detailed investigation is to be completed within 90 days and concludes with an opinion by the Service on whether the proposed project would jeopardize the continued existence of the species. Suggested measures for mitigating adverse impacts normally accompany the Service's opinion, but ultimate responsibility for ensuring the species' protection rests with the agency initiating the action.

Results in Brief

The Endangered Species Act's consultation requirements have, on the whole, had little effect on western water development. In terms of overall impact, between October 1977 and March 1985 only 68 consultations (out of about 3,200 consultations concerning water development

projects) affected the projects with which they were associated. These consultations had varying, but normally limited, impact on the projects' timing, scope, and cost. Most importantly, no water project was terminated as a result of a consultation, and cost increases caused by consultation requirements generally represented a small percentage of total project costs. Further, for these affected projects, other concurrent difficulties such as lack of funding often had more serious effects than consultation requirements.

The major concerns about water project development have been centered in two river basins (representing 42 of the 68 consultations). Project developers and conservation interests in these basins, however, have frequently been able to develop compromise strategies that have allowed projects to proceed while also providing conservation measures for the affected endangered species.

Principal Findings

Overall Impact

In the 17 western states, the Service conducted about 16,700 consultations during the 7-1/2 years (1977-85) covered by GAO's review. Approximately 3,200 of the consultations concerned proposed water development projects. From these consultations, GAO identified 68 in which the consultation process had an effect on the associated projects' timing, scope, or cost. The 68 consultations affected 62 projects in 9 western states.

The major concern about the consultations' effects on projects has been centered in two river basins—the Upper Colorado and the Platte. In these basins, the Service has held that any water depletions would likely jeopardize the endangered species present. As a result, concern among water developers has been especially intense in these areas. The Service has been able to develop several compromise approaches to allow continued development of water supplies while also developing measures to protect the endangered species in these basins. One of these is the so-called Windy Gap assessment, whereby project developers wishing to use water from the Upper Colorado basin are assessed a fee that funds conservation and research activities for the endangered species in that basin. Another is the committee approach where interests from the Upper Colorado and Platte river basins meet to arrive at a strategy which can best serve both water developers and species survival.

Project Timing

With respect to the consultations' impact on project timing, GAO found that although 39 of the consultations with deadlines exceeded the prescribed 90-day time limit, they usually did not lengthen the time to complete the associated project. Many tasks such as obtaining licenses, permits, and funding are involved in getting a water project under construction. When problems are being experienced in these areas, there may be little practical effect from extended consultations. As such, for 26 of the 39 consultations that exceeded the prescribed time limit, officials with the federal agencies initiating the consultation said the consultation did not extend the time to complete the associated projects. In the remaining 13 cases, officials attributed project delays of between 1 week and 2 years to consultation requirements.

Project Scope and Cost

The consultations GAO reviewed also did not materially alter project scopes or substantially increase project costs. In 62 of the 68 cases, the consultation caused project officials to take actions which led to project modifications, cost increases, or both. Of these, GAO was able to obtain estimated cost effects for 49 consultations. These estimates ranged from less than \$100 to \$10.1 million.

The consultations' cost impacts generally represented a small percentage of total project costs. For example, the total cost of the project experiencing the \$10.1 million cost increase was \$1.6 billion—an increase of less than 1 percent. Moreover, none of the project modifications recommended during consultation caused a project to be terminated.

Recommendations

This report contains no recommendations.

Agency Comments

GAO discussed the contents of the report with responsible agency officials, and their comments were incorporated where appropriate. However, as agreed with the requesters' offices, GAO did not obtain official agency comments on a draft of this report.

